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Docket No.: 20107/1200838-US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Earl Rotman et al.

Application No.: 10/709,329

Confirmation No.: 3328

Filed: April 28, 2004

Art Unit: 3628

For: SYSTEM AND METHOD FOR CREATING
TRADEABLE FINANCIAL UNITS

Examiner: N. B. Nguyen

12/28/2004 SFELEKE1 00000010 10709329

01-FC:1999

130.00 OP

PETITION FOR FILING DATE

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The applicant in the above-identified patent application hereby petitions the United States Patent and Trademark Office to grant a filing date of April 28, 2004 to the above-identified patent application. A Notice to File Missing Parts Dated December 13, 2004 indicates that the application had been granted a filing date of July 15, 2004, the date upon which the USPTO received replacement drawings for this patent application. There are two grounds supporting this petition:

A. Drawings were in fact present in the application as filed;

B. To the extent that the method is concerned, drawings are not required for a complete description of the invention, and to the extent that apparatus claims are concerned, drawings were incorporated by reference in the provisional patent application of which the priority is claimed.

12/27/2004-SFELEKE1-00000023-10709329

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Adjustment date: 12/28/2004 SFELEKE1

12/27/2004 SFELEKE1 00000023-10709329

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A. A Complete Set Of Drawings Was Present In This Patent Application As Filed

This patent application was filed electronically on April 28, 2004. Attached as Exhibit A is a true copy of the USPTO Acknowledge Receipt (3 pages) relating to this filing. The filing was done with IPDAS Version 3.2.1, which is authorized by the United States Patent and Trademark Office. I have reviewed the file list and have found it to be substantially the same as the file list of other electronically filed patent applications which contained all of the pages of the application, including the drawings.

Referring further to Exhibit A, it shows a filing date of April 28, 2004. There is no indication on the receipt that the filing process was ineffective in anyway. Moreover, the filing receipt contains a message (ISVR1) saying that the submission of successfully submitted and that it should not be resubmitted, even if warning messages appear, which they do not. Furthermore, there is message (WUTL2) indicating the absence of a declaration, but nothing referring to the drawings.

This patent application was filed from a dedicated computer. I have been informed that although we still have the hard disk drive from that computer, it is not accessible. However, at the time of filing the operator printed out a copy of each file used to generate the file that IPDAS sent to the USPTO. Exhibit B is a true copy of the printout of all the drawings files. The following figures are present: Figures 1-8. Thus, I am able to confirm that every figure was present among the files that were used by IPDAS to generate the file used for electronic filing. I am informed that it is impossible to view the contents of the ultimate file used for electronic filing.

Thus, I have confirmed that every figure was present among the files used by IPDAS to generate the file sent by IPDAS as the present patent application. Specifically, it is clear that all of the drawings were present at the time that IPDAS was activated to generate the file that was sent to the USPTO. IPDAS was authorized by the USPTO for that purpose. Accordingly, it is clear that drawings were present when an authorized program was used to file this patent application in the USPTO. It would not be possible to determine from the computer files, if they were available at Darby and Darby, what happened to the drawings once the USPTO authorized instrumentalities

were put into play. However, it is submitted that those drawings came into the possession of the USPTO when those instrumentalities were put into play.

It is therefore clear that the drawings were present in this patent application at the time it was filed and that this application should therefore be accorded a filing date equal to the date of electronic filing. The drawings comprising that application are those shown in Exhibit B.

B. As Far As The Method Invention Is Concerned Drawings Are Not Required And As Far As The Apparatus Invention Is Concerned They Were Present As Incorporated By Reference

1. Drawings Are Not Required For The Method Invention

It is a practice of the USPTO to treat an application that contains a process or method claim as an application for which a drawing is not necessary for understanding of the invention pursuant to 35 U.S.C. §113. MPEP Section 601.01(f) provides specifically that:

It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for understanding of the invention under 35 U.S.C. §113 (first sentence).

That section of the MPEP goes on to discuss the procedure for handling applications under these circumstances. However, there can be no doubt that drawings are not considered necessary when a method invention is concerned.

Furthermore, MPEP Section 601.01(g) states the following:

If the application is filed without all of the drawing figure(s) referred to in the specification and the application contains something that can be construed as a written description, at least one drawing, if necessary, under 35 U.S.C. §113 (first sentence), and...at least one claim, OIPE will mail a "Notice of Omitted Item(s)" indicating that the application papers so deposited *have been accorded a filing date...*(Emphasis Added)

As shown below, this application, as filed, contained at least one drawing, which was incorporated by reference from the provisional patent application of which the priority is claimed. Such incorporation by reference is provided for specifically in 37 C.F.R. §1.57.

Accordingly, this patent application should have been accorded a filing date equal to the electronic filing date, regardless of whether or not the electronically filed drawings are considered to be present. The presently accorded filing date is in error.

2. As Far As The Apparatus Of The Invention Is Concerned,
Drawings Were Incorporated By Reference

This patent application claims the benefit of the filing date of U.S. Provisional Patent Application No. 60/539,526 filed January 26, 2004. Pursuant to 37 C.F.R. §1.57(a), under these circumstances, this section of 37 C.F.R. provides that:

If any portion of the specification or drawings is inadvertently omitted from an application, but was present in the prior filed provisional application on its filing date, those portions shall be considered to be incorporated by reference from the prior application as to the inadvertently omitted portions.

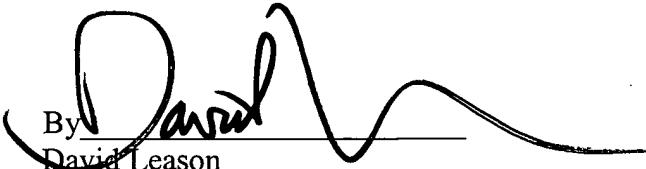
Thus, the drawings present in the provisional application which describe the apparatus aspect of the invention were present in the present application as filed.

For all of the above reasons, it was an error not to accord the present patent application a filing date of April 28, 2004 and, accordingly, it is respectfully requested that this application be accorded that filing date.

Dated:

December 22, 2004

Respectfully submitted,

By 
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UNITED STATES PATENT AND TRADEMARK OFFICE
ACKNOWLEDGEMENT RECEIPT

Electronic Version

Stylesheet Version v1.1.1

Title of Invention	SYSTEM AND METHOD FOR CREATING TRADEABLE FINANCIAL UNITS
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Submission Type: Utility Patent Filing

Application Number: 10/709329 *10/709329*

EFS ID: 60030

Server Response:

Confirmation Code	Message
ISVR1	Submission was successfully submitted - Even if Informational or Warning Messages appear below, please do not resubmit this application
ICON1	3328
WUTL2	Filename= 201071200838US1-pkda.xml BusinessRule= The utility patent submission does not include at least one declaration.

First Named Applicant: Earl Rotman

Attorney Docket Number: 20107/1200838-US1

Timestamp: 2004-04-28 17:46:01 EDT

From: us

File Listing:

Doc. Name	File Name	Size (Bytes)
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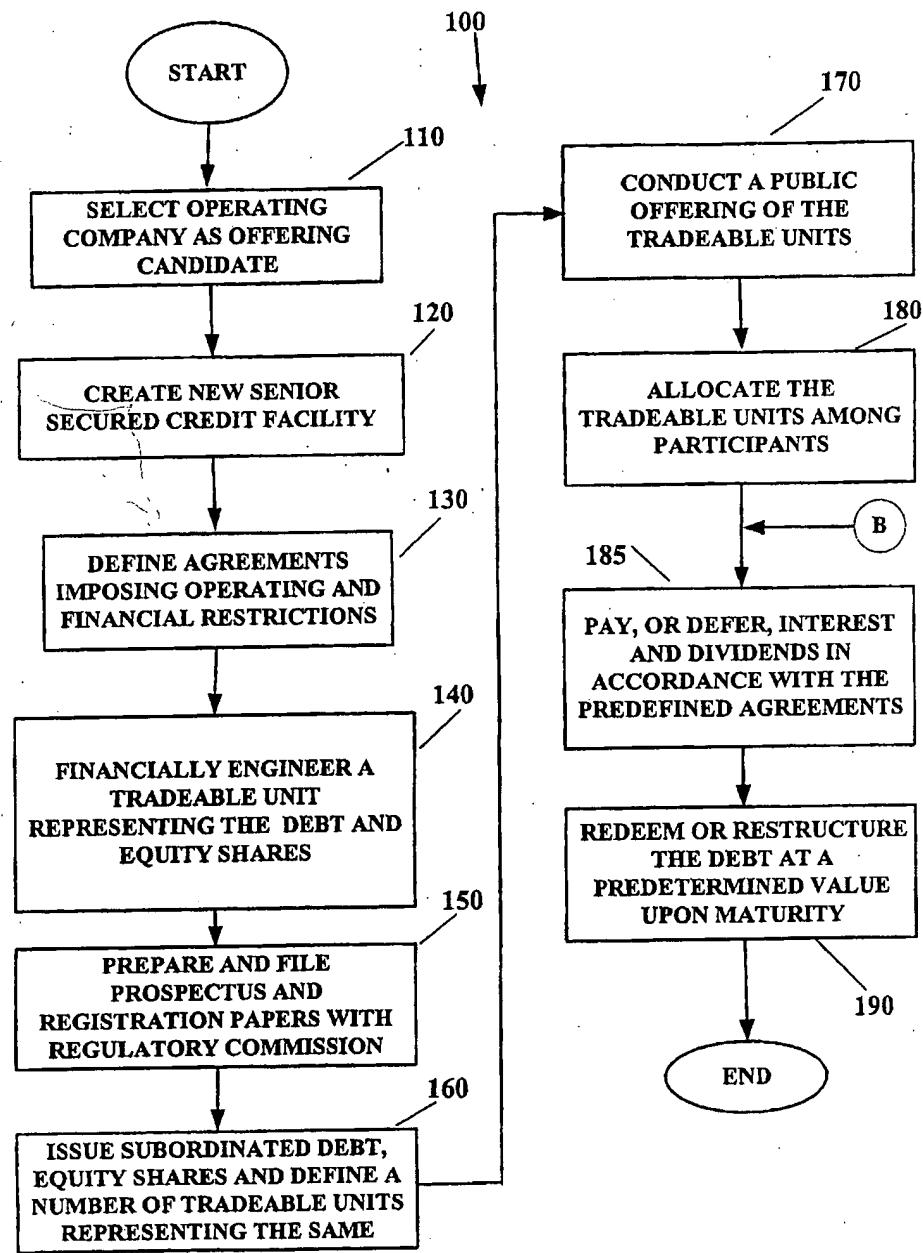


FIGURE 1

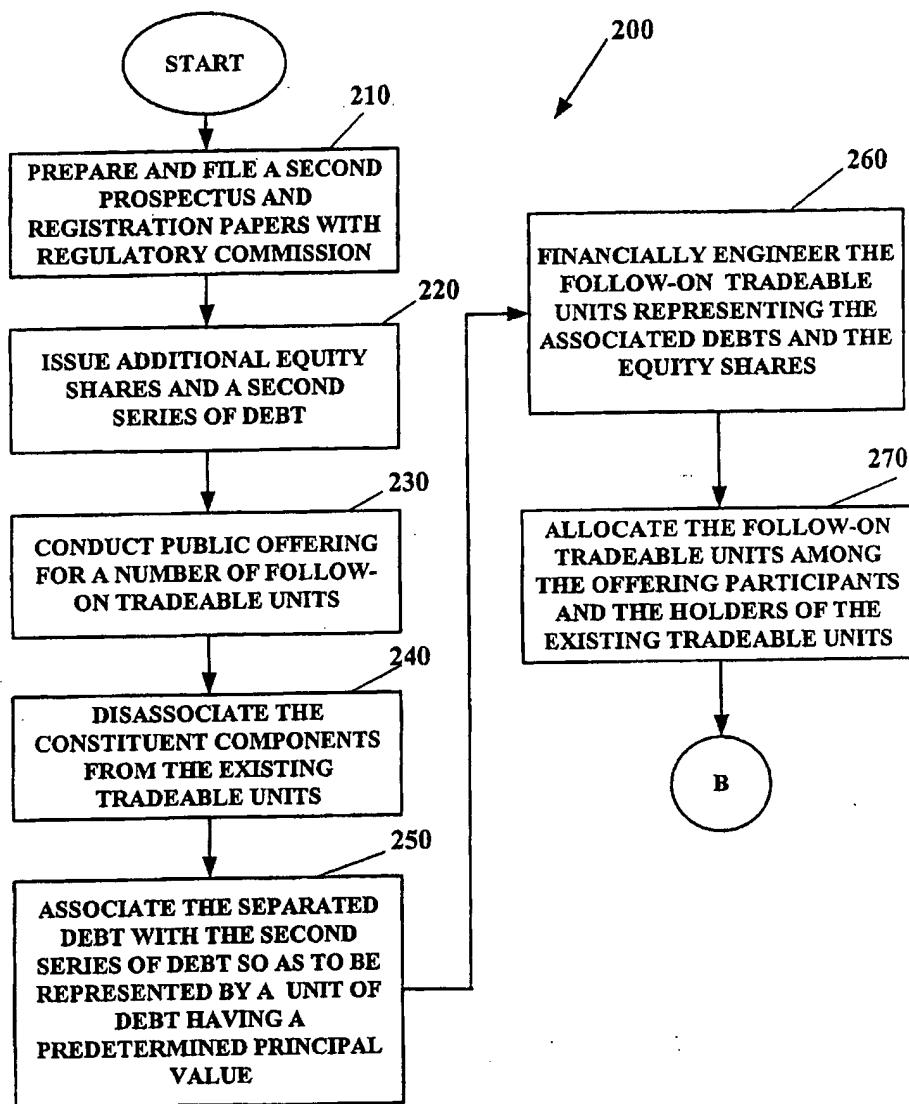


FIGURE 2

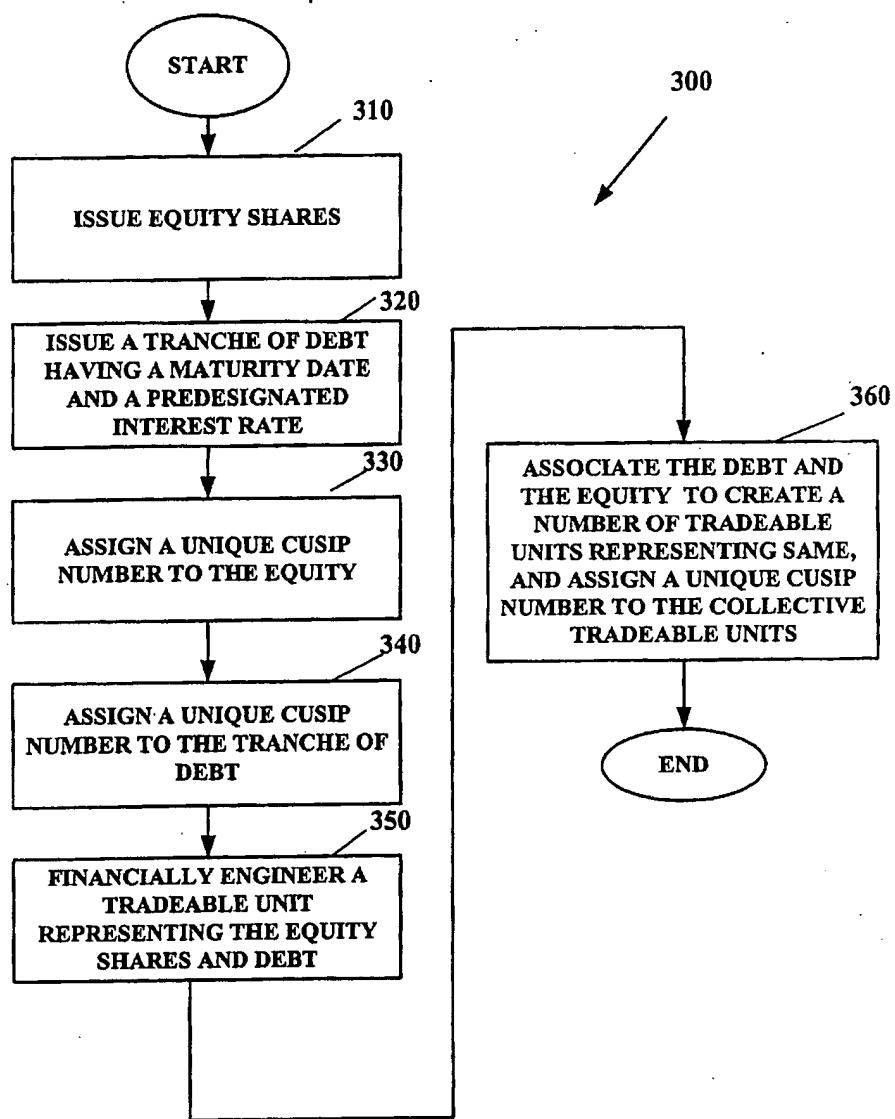


FIGURE 3

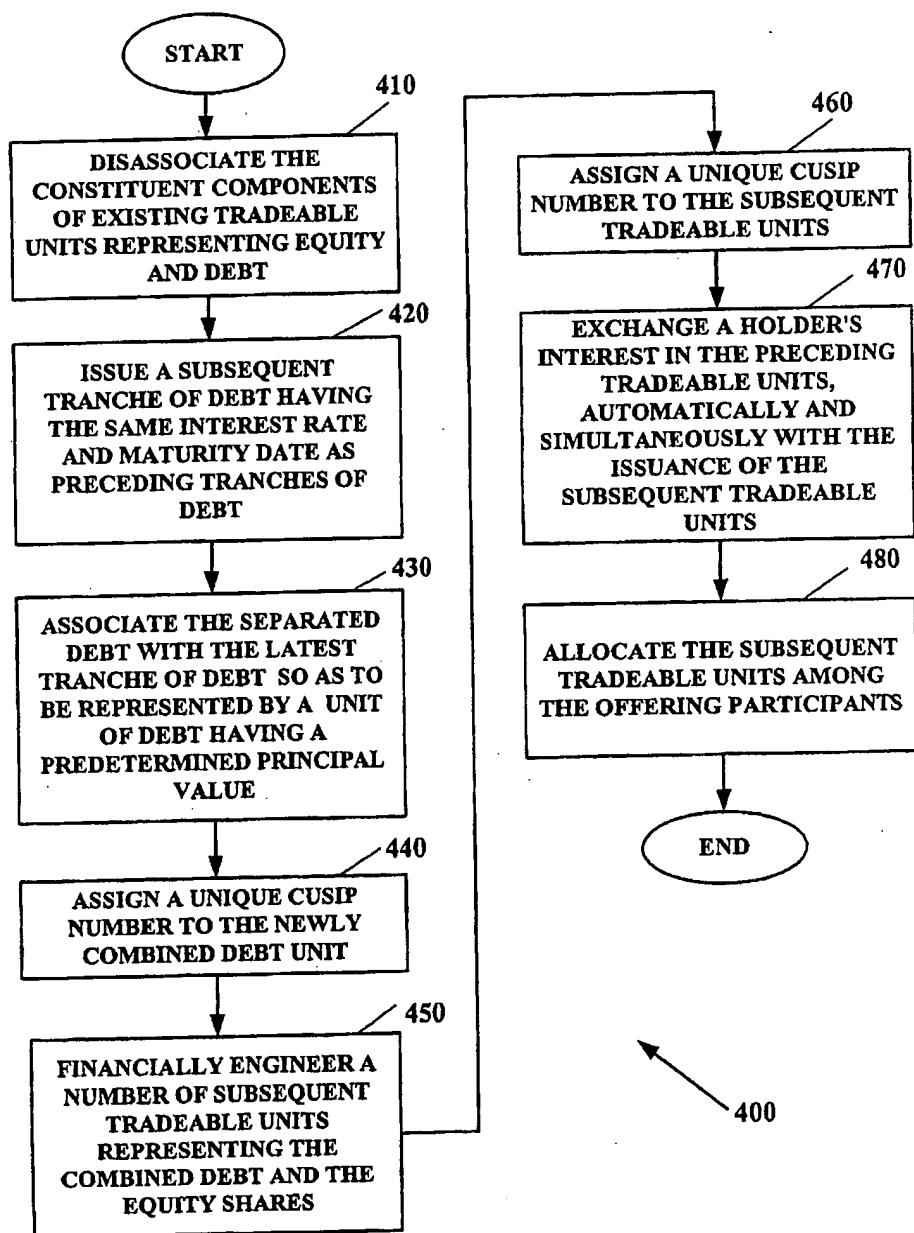


FIGURE 4

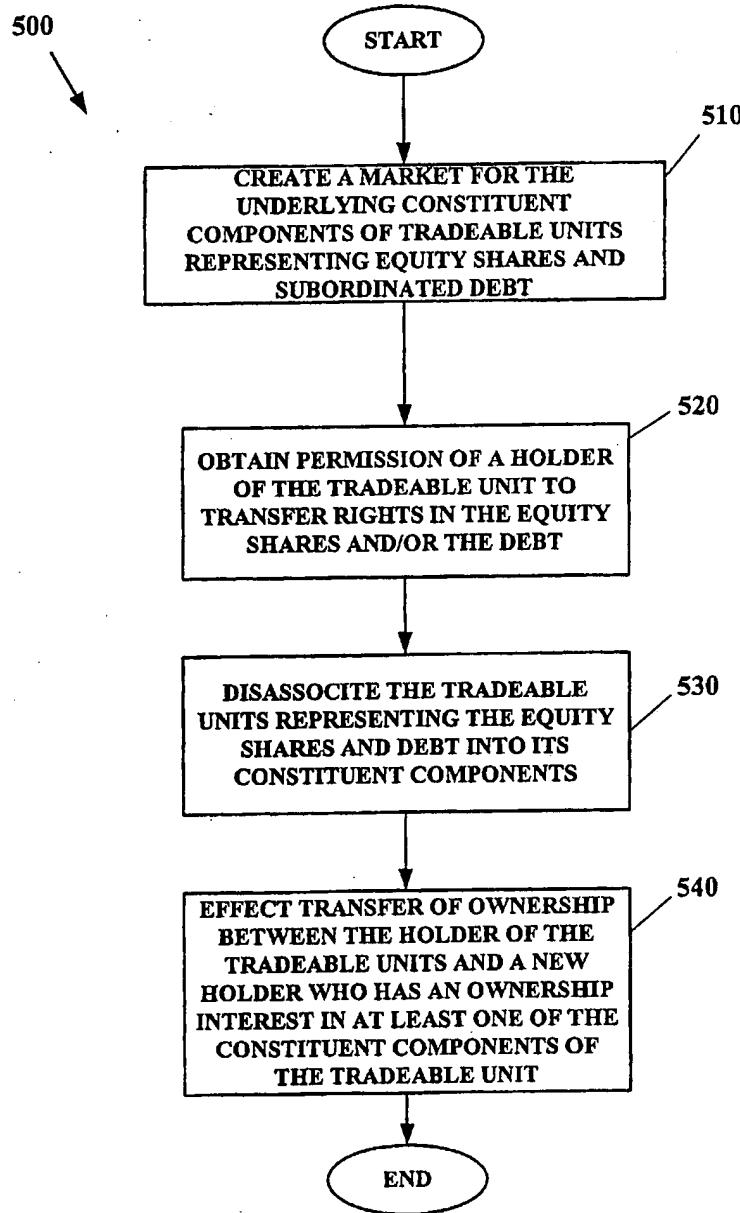


FIGURE 5

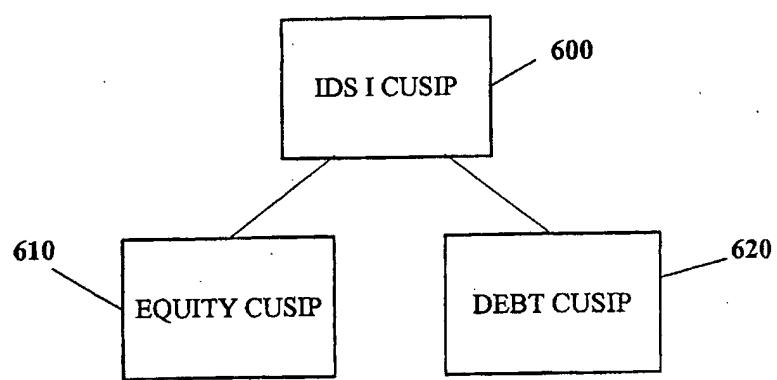


FIGURE 6

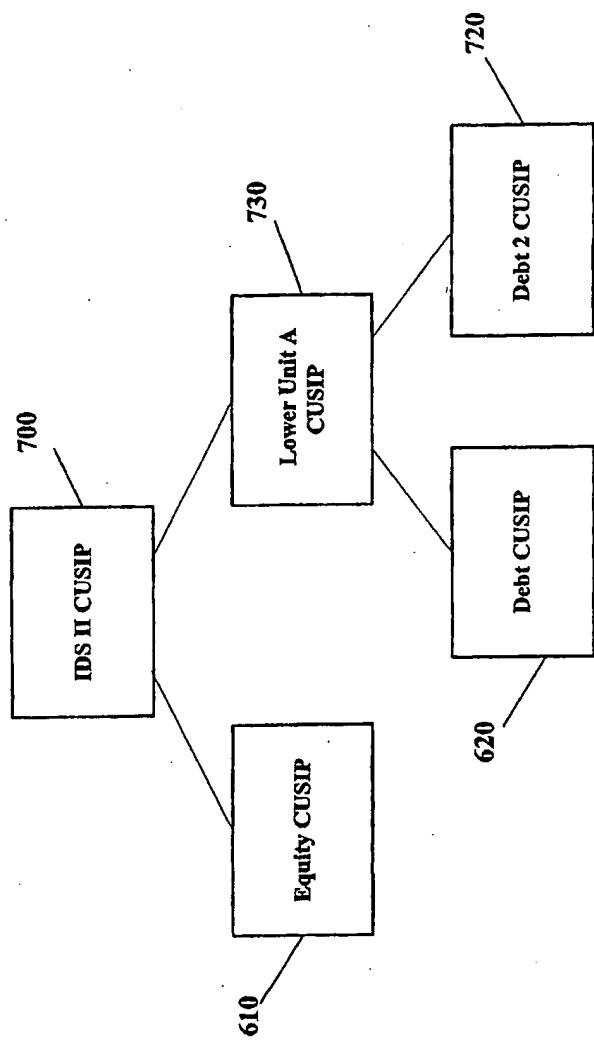


FIGURE 7

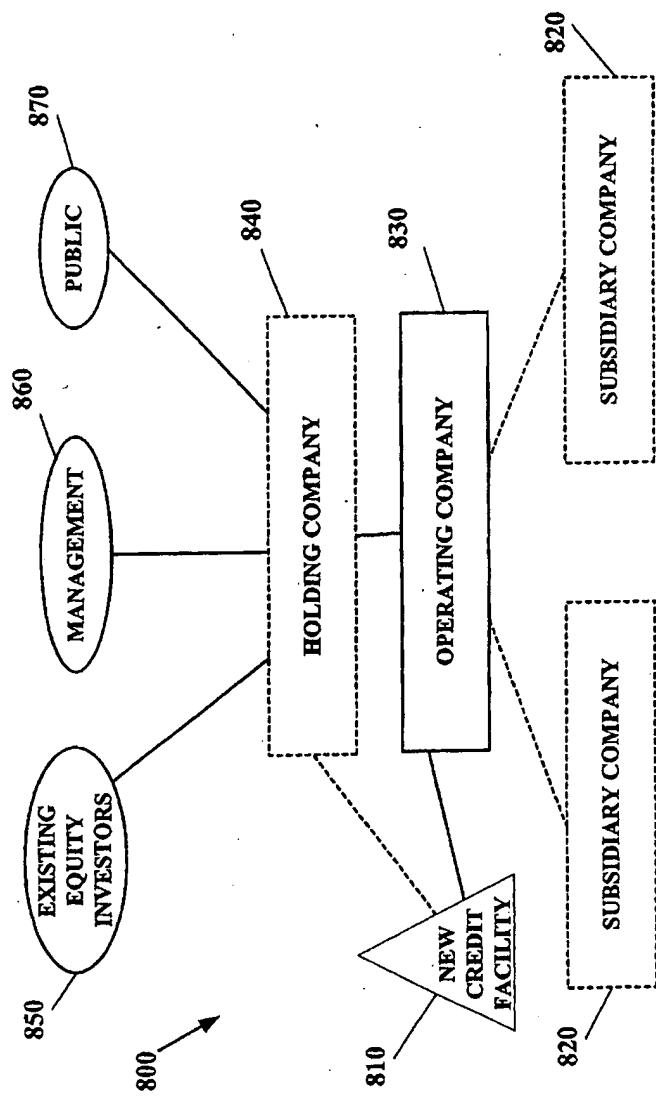


FIGURE 8

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